

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KAREN McCLARNON,

Civil Action No: 2:20-cv-779

Plaintiff,

v.

BOROUGH OF VANDERGRIFT,  
KATHY CHVALA, individually and in  
her official capacity,  
CHRISTINE WILSON, individually and  
in her official capacity,  
JOHN USKURAITIS, individually and in  
his official capacity,  
THOMAS HOLMES, individually and in  
his official capacity,  
LENNY COLLINI, individually and in  
his official capacity,  
BARBARA TURIK, individually and in  
her official capacity,  
JOSEPH M. CAPORALI, individually and  
in his official capacity,  
NATHAN RIGATTI, individually and in  
his official capacity.

**JURY TRIAL DEMANDED**

Defendants.

**MOTION TO DISMISS COMPLAINT**

Defendants, through undersigned counsel, respectfully submit this Motion to Dismiss Complaint pursuant to Fed.R.Civ.P. 12(b)(6), based upon the following considerations:

1. Plaintiff, an elected member of Vandergrift Borough Council, initiated this lawsuit against the Borough, various other Council members, the Mayor, Police Chief, and a Borough police officer, alleging violations of her constitutional rights pursuant to 42 U.S.C. § 1983.

2. Defendants respectfully submit that the Complaint is legally insufficient and should be dismissed pursuant to Rule 12(b)(6) on the following grounds:

- a. As fully set forth in Section III.A. of the accompanying Brief, the Complaint fails to plead facts demonstrating the personal involvement of Defendants Turiak and Rigatti in any alleged violation of Plaintiff's rights, as required sustain a claim under 42 U.S.C. § 1983;
- b. As fully set forth in Section III.B. of the accompanying Brief, the Complaint fails to plead facts demonstrating that Plaintiff was deprived of a constitutionally protected liberty or property interest, as required to state a claim for violation of procedural due process (Count One);
- c. As fully set forth in Section III.C. of the accompanying Brief, Plaintiff's equal protection "class of one" claim (Count Two) is not cognizable because it would require impermissible judicial inquiry into political motives, and because a rational basis exists as a matter of law for the defendant legislators to allegedly treat a political opponent differently than political allies;
- d. As fully set forth in Section III.D. of the accompanying Brief, the Complaint fails to show that Plaintiff was deprived of any constitutionally protected interest in connection with the alleged defamatory statements, as required to state a claim of defamation under the Fourteenth Amendment (Count Three);
- e. As fully set forth in Section III.E. of the accompanying Brief, Plaintiff's First Amendment retaliation claim (Count Four) is not cognizable because

it would involve judicial review of alleged conduct of a political nature, and because the alleged retaliatory conduct is not sufficiently extreme, as a matter of law, to deter a “person of ordinary firmness” from exercising her First Amendment rights as an elected official;

- f. As fully set forth in Section III.F. of the accompanying Brief, the individual Defendants are entitled to qualified immunity as to all claims, because the Complaint fails to allege facts showing the violation of any clearly established constitutional right; and
- g. As fully set forth in Section III.G. of the accompanying Brief, all claims against the Borough and the individual Defendants in their official capacities are legally insufficient, because the Complaint fails to allege facts demonstrating any violation of Plaintiff’s rights by any Borough official or employee.

3. As set forth in the accompanying Certificate, prior to filing this motion, counsel for Defendants conferred in good faith with counsel for Plaintiff regarding whether the above-cited deficiencies in the Complaint could be addressed by amendment or stipulation.

WHEREFORE, Defendants respectfully request that the Complaint be dismissed with prejudice as against all Defendants.

Respectfully submitted,

**THOMAS, THOMAS & HAFFER, LLP**

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